

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

BLACK LOVE RESISTS IN THE RUST, *et al.*,
individually and on behalf of a class of all others
similarly situated,

Plaintiffs,

v.

CITY OF BUFFALO, N.Y., *et al.*,

Defendants.

No. 1:18-cv-00719-CCR

**PLAINTIFFS' MOTION, ON CONSENT,
TO MODIFY THE SCHEDULING ORDER**

With the consent of Defendants, Plaintiffs respectfully move for an extension of ninety days to the scheduling deadlines presently set by the Court's scheduling order. *See* ECF Nos. 95, 96. In support of this Motion, Plaintiffs state:

1. Under the present schedule, the deadline for completion of fact discovery and any accompanying motions to compel is September 8, 2021. The Court has set additional deadlines, leading to a dispositive motion deadline of January 25, 2022.

2. As ordered by the Court at the May 11, 2021, status conference, Defendants completed production of then-agreed ESI (original custodians/original search terms) in two tranches, on May 17 and May 31, 2021. The May 31 production alone consisted of approximately 70,000 documents, comprising 250,000 pages—more than *four times* the entire volume of production in the case prior to that date.

3. At the May 11 status conference, the Court also ordered that the parties meet and confer concerning Plaintiffs' proposed additional ESI custodians and search terms after May 31, 2021. *See* ECF No. 93.

4. Plaintiffs took seriously their obligation to review their requested additional search terms and custodians in light of the production already made, but that effort necessarily took some time in light of the massive May 31 production. On July 20, 2021, Plaintiffs sent Defendants a comprehensive written proposal with a sharply curtailed list of additional custodians and search terms and addressing all then-outstanding discovery issues. (Exhibit 1) Plaintiffs requested that Defendants respond in writing, with the letter and response then to serve as the agenda for a meet-and-confer.

5. Counsel for Defendants never responded in writing, despite multiple promises to do so.

6. The meet-and-confer on August 5 was hampered by the lack of a written response, but it appeared that some progress might have been made. A follow-up meeting scheduled for August 12, however, was adjourned because there was a death in the family of counsel for Defendants.

7. On counsel's return, Plaintiffs sent Defendants a proposed Consent Order that would address all outstanding discovery issues, with a request to respond with either a signoff or a markup. (Exhibit 2; non-germane attachments omitted) To date, counsel for Defendants has once again failed to abide by promises to provide a written response.

8. To the extent there is not agreement on the proposed Consent Order, Plaintiffs intend to move for its entry as a contested motion. Plaintiffs expect to be able to make any such motion by the week of September 20 (the timing is due to the impending Jewish Holidays).

9. In the meantime, however, the case schedule needs to be modified once again. Depositions have not yet restarted, although it may be possible to take some depositions starting in

October. Nevertheless, a full deposition program cannot be put in place until the pending discovery issues are resolved.

10. It unfortunately remains true that this extension request will likely not be the last one, but for the reasons set forth above, good cause exists to justify this request to extend the discovery and dispositive motion deadlines by three months.

11. Accordingly, Plaintiffs, with the consent of Defendants, respectfully request the following modifications of the schedule:

Deadlines	Current Date	Modified Date
Deadline for completion of fact discovery	September 8, 2021	December 8, 2021
Deadline for motions to compel discovery	September 8, 2021	December 8, 2021
Deadline for service of Initial Expert Reports	November 1, 2021	February 1, 2022
Deadline for service of Rebuttal Expert Reports	November 29, 2021	March 1, 2022
Deadline for completion of all expert discovery (incl. expert depositions)	December 20, 2021	March 22, 2022
Deadline for Dispositive Motions	January 25, 2022	April 25, 2022

WHEREFORE, Plaintiffs respectfully request that the Court modify the schedule as proposed.

Dated: September 1, 2021

Respectfully Submitted,

[Signatures Follow]

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CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2021, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Western District's Local Rules, and/or the Western District's Case Filing Rules & Instructions upon all counsel registered through the ECF System.

/s/ Edward P. Krugman